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November 15, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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Comments on Canadian Securities Administrators ("CSA") Consultation Paper 54-101: Review of the Proxy Voting Infrastructure (the "Consultation Paper")

Thank you for the opportunity to comment on the Consultation Paper.

TELUS is a leading national telecommunications company in Canada with $11.2 billion of annual revenue and 13.2 million customer connections. TELUS provides a wide range of communications products and services including wireless, data, internet protocol (IP), voice, television, entertainment, and video.

We support the need for a review of proxy voting in Canada. We also believe the CSA has a fundamental interest and responsibility with respect to the oversight of the proxy voting infrastructure. The exercise of voting rights is a key aspect of share ownership under not only corporate law, but also under securities rules and stock exchange requirements. Substantive requirements with respect to the exercise of proxy voting rights and disclosure related thereto are contained in securities legislation. And in some cases, corporate legislation has deliberately chosen to avoid duplication of rules either by incorporating

securities rules by reference or, as is the case under the *Business Corporations Act* (British Columbia), by choosing not to regulate the solicitation of proxies.

The Consultation Paper takes an encouraging first step towards addressing some of the concerns that have been identified with proxy voting in Canada. But the CSA needs to go further. In particular, the CSA must address empty voting strategies that are designed to manipulate the proxy voting infrastructure to advance short term trading strategies and must increase transparency in share ownership in order to enhance shareholder engagement. The problem of empty voting is now well known and has received extensive analysis. But more than this: it can cause substantial harm to companies that are subjected to the short term and highly opportunistic strategies that are frequently at the heart of empty voting. It is therefore incumbent on the CSA to take steps to address the problems that empty voting engenders.

Empty Voting

The legitimacy of a shareholder vote under corporate and securities law is premised on the assumption that shareholders have a genuine economic interest, and therefore a common economic incentive, to cast their votes with a view to maximizing the value of the corporation. Although shareholders may legitimately disagree as to whether a particular course of action is in the best interests of the corporation or fair and reasonable, their collective judgment, as evidenced by a shareholder vote, is taken as a reliable barometer provided that they can be presumed to share the same fundamental incentive and that their decision is made on an informed basis.

Empty voting undermines this cornerstone of shareholder democracy. Where voting rights are decoupled from economic interests, the result of the vote, to the extent it is unduly influenced by such decoupling, is no longer a valid indication as to whether the matter in question is in the best interests of the corporation or fair and reasonable. This is the case to an even greater extent in the case of so-called "negative empty voting", where the shareholder puts in place trading strategies that give it an incentive to vote in a manner that is intended to cause the share price to decline.

TELUS and its shareholders have had firsthand experience with empty voting, including "negative empty voting".

In response to sustained feedback over some time from shareholders with an economic interest in TELUS, in February of last year TELUS announced a plan to collapse its dual class share structure and move to a single class of voting common shares. The plan sought to eliminate TELUS' non-voting shares through a 1:1 exchange for voting shares, subject to approval by shareholders of both classes. In addition to simplifying TELUS' share structure, the plan was intended to enhance the liquidity and marketability of TELUS' shares and TELUS' leadership in the adoption of good corporate governance practices by enabling shareholders with identical economic interests to exercise the same voting rights. The plan was favourably received and the prices of both share classes increased upon its announcement.

However, a New York based hedge fund amassed a significant voting position in TELUS' voting shares following the announcement of the proposal with a view to profiting from a short-term trading strategy that hinged on defeating the proposed share exchange. The hedge fund employed an empty voting strategy that involved taking long and short positions in TELUS' shares in order to vote a very significant block of shares (approximately 19% of the voting class) while having net holdings of 0.21% of TELUS' total outstanding and issued shares. The hedge fund sought to defeat the proposal believing that it would profit as it expected that the trading price of the non-voting shares would decrease more than the trading price of the voting shares, thereby resulting in a gain in its short position in non-voting shares that would exceed any loss on its offsetting long position in voting shares.

Ultimately, TELUS was able to simplify its share structure with the approval of its shareholders, but only after considerable delay and expense that involved multiple rounds of litigation. The problem of empty voting received considerable judicial attention that recognized that it is a real and pressing problem. Moreover, as the decision of the British Columbia Court of Appeal in respect of the TELUS proposal in

October of last year made clear, concerted action on the part of those authorities responsible for supervising the proxy voting system is needed to address the problem.

The CSA are responsible for overseeing the proxy voting system and therefore need to take steps to prevent the strategic misuse of the proxy voting infrastructure for the purpose of exercising voting rights which are materially disproportionate to the investor's actual economic interest in the corporation. At a minimum, the CSA should ensure that in cases where empty voting may have a significant impact on the result of a shareholder vote, there is full and transparent disclosure about the various components of the investor's investment strategy and trading position, as well as its financial objectives.

Need for Increased Transparency

We believe that transparency of ownership should be a necessary condition to the exercise of shareholder rights by beneficial owners. The names, addresses and holdings of registered holders of shares may be obtained by interested persons and the same information should be required of those beneficial owners who exercise shareholder rights through intermediaries.

The voting positions of beneficial owners should be transparent to an issuer and its shareholders to enable issuers and their shareholders to communicate more effectively and so that they may govern themselves with knowledge of this position. As noted in the discussion paper "Quality of the Shareholder Vote in Canada" published by Davies, Ward, Phillips & Vineberg LLP in October 2010, the OBO concept reduces transparency and adds an unnecessary layer of complexity. Eliminating the OBO concept would facilitate direct communication and eliminate impediments to shareholder engagement that arise from the multi-tiered intermediated securities holding system. We believe that not only would proxy voting and communications become more reliable, but communicating also would become faster and more effective.

We also believe that the exercise of other shareholder rights by beneficial owners through securities registrants and depositaries regulated by the CSA should be required to be effected on a transparent basis. For example, last year, TELUS received a requisition for a shareholder meeting signed by CDS & Co. The requisition stated that CDS & CO. was doing so as the shareholder of record at the request of a CDS participant and only as a nominal party for the true parties in interest and CDS & Co. expressly disclaimed any interest in the matter. Although the New York hedge fund subsequently claimed responsibility for causing the shareholder requisition to be delivered, at no time were the identities of the actual beneficial owners of the securities identified to TELUS or its shareholders. It was not possible to properly assess whether the beneficial owners behind the delivery of the shareholder requisition met the ownership thresholds and other procedural safeguards attendant to the delivery of a shareholder requisition and the exercise of the extraordinary right to cause a meeting of shareholders to be convened. In effect, the beneficial owners were in a position to exercise rights that might not have been available to them had they held shares directly rather than indirectly through intermediated holdings. The CSA should not permit intermediaries and depositories subject to CSA oversight to exercise shareholder rights on behalf of undisclosed beneficial owners.

Overvoting

The Consultation Paper asks how often does overvoting occur including pending overvotes that are ultimately resolved. In response to this question, TELUS notes that it encountered overvoting at each of TELUS' shareholder meetings in 2012 and 2013, although the number of shares ultimately voted in excess of an intermediary's actual position in each case was relatively small. TELUS used the services of a proxy solicitation agent which assisted intermediaries in rectifying defects in submitted proxies, which helped reduce the level of overvoting. In the days leading up to the deadline for the receipt of proxies for TELUS' May 2012 annual meeting of shareholders, TELUS was concerned that the number of overvoted shares would be large as the total share positions reported by financial intermediaries to Broadridge and reflected in Broadridge share range reports substantially exceeded the number of shares held through depositaries. However, in an updated Broadridge share range report received just before the proxy deadline, the excess number of reported share positions was much smaller as the total reported share positions was substantially reduced. TELUS has no information on how the discrepancy was resolved by

Broadridge. The potential overvote leading up to the May 2012 shareholder meeting may have been caused in part by the heavy borrowing of shares required for the hedge fund's empty voting strategy.

Thank you for the opportunity to comment on the Consultation Paper. We would be happy to discuss this submission with you in greater detail.

Yours truly,

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